

REMARKS

This paper is filed in response to the Office Action mailed on April 22, 2002. Claims 1, 6-26, 31-33, and 62-77 are pending. Claims 21-23 and 31 have been withdrawn from consideration. Claims 1, 6-20, 24, 25, 32, 33, and 62-77 have been examined and are rejected. Claims 1, 8, 13-18, 32, 75, and 77 are amended. Claims 24, 25, 33, and 62-74 have been canceled without acquiescence to the Examiner's actions, without abandonment of the invention of the canceled claims, and without prejudice to applicants' rights to pursue the subject matter of the canceled claims in any application that may be filed in the future. Reconsideration of Claims 1, 6-20, 26, 32, and 75-77 is respectfully requested.

Comment on Protracted Examination

Applicants wish to call to the Examiner's attention the protracted nature of the examination of this application. This application was filed August 8, 1998. A Notice of Allowance was issued on June 14, 2000. The Issue Fee was paid August 11, 2000. On March 19, 2001, a Notice of Withdrawal From Issue was received. The first action on the merits after withdrawal was mailed on April 22, 2002, more than one year after the withdrawal from issue and almost two years from the initial indication of allowance. The protracted examination is of great concern to the applicants. Applicants respectfully request that the Examiner complete examination of this application as expeditiously as possible. Accordingly, if, after consideration of this response, any issues remain that may be expeditiously addressed in a telephone interview, applicants request that the Examiner telephone applicants' attorney in an attempt to resolve any such issues.

The Petition to Accept Photographs

Applicants have not received a decision on the petition. It is applicants' understanding that petitions to accept photographs are no longer required. Accordingly, applicants believe the

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status of the petition is no longer relevant. If applicants' understanding is in error, applicants request being so informed.

The Objection to the Disclosure

The disclosure is objected to for certain informalities, namely, the application numbers referenced in the application need to be updated to reflect the patent numbers. The specification has been amended in accordance with the Examiner's instructions.

The Objection to the Amendment Filed March 24, 2000, Under 35 U.S.C. § 132

The Amendment filed on March 24, 2000, is objected to under 35 U.S.C. § 132 because it introduces new matter into the disclosure. The applicants respectfully traverse the objection to the amendment.

The new matter that is not supported by the original disclosure is purportedly that Claims 66, 69, 74, and 77 recite the binder being at least one of bicomponent fibers and a wet strength agent.

Applicants understand the Examiner is stating that the specification does not support a claim reciting that a binder can be both a bicomponent fiber and a wet strength agent.

Applicants respectfully direct the attention of the Examiner to the specification on page 12, line 31, wherein "binder" is stated as referring to a system. Further, on page 13, lines 1-3, suitable binders include bonding agents, such as thermoplastic and thermosetting materials, soluble bonding mediums used in combination with solvents, and wet strength agents. Accordingly, Claims 66, 69, 74, and 77 find support in the specification; therefore, withdrawal of the objection is respectfully requested.

The Objection to the Specification Under 37 C.F.R. § 1.71

The specification is objected to under 37 C.F.R. § 1.71 because the specification as originally filed purportedly fails to provide support for the claim limitations of Claims 66, 69, 74,

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and 77 as discussed in relation to the objection to the amendment of March 24, 2000. Applicants respectfully traverse the objection to the specification. Applicants have pointed to specific locations in the specification where support can be found for Claims 66, 69, 74, and 77. Accordingly, withdrawal of the objection is respectfully requested.

The Rejection of Claims 66, 69, 74, and 77 Under 35 U.S.C. § 112, First Paragraph

Claims 66, 69, 74, and 77, are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Claims 66, 69, and 74 have been canceled. Applicants respectfully traverse the rejection of Claim 77. Applicants have pointed to specific locations in the specification where support can be found for Claim 77. Claim 77 has been amended for further clarification and not for any reason related to patentability. Accordingly, withdrawal of the rejection is respectfully requested.

The Rejection of Claims 1, 6-20, 24, 25, 32, 33,
and 62-77 Under 35 U.S.C. § 112, Second Paragraph

Claims 1, 6-20, 24, 25, 32, 33, and 62-77 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

With respect to Claims 1, 32, 33, 62, 67, and 70 purportedly there is no antecedent basis for the phrase "the first and second strata." Claims 33, 62, 67, and 70 have been canceled. Applicants respectfully traverse the rejection of Claims 1 and 32.

Section 112, second paragraph, requires the Examiner to take into consideration the content of the application, the teaching of the prior art, and the interpretation given the claims by one of ordinary skill. Based on these criteria, applicants respectfully submit that the claims are

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not indefinite. "Strata" is the plural of "stratum." The strata previously referred to are the first and the second stratum. Claims 1 and 32 have been amended for further clarification, and not for any reason related to patentability. Accordingly, withdrawal of the rejection is respectfully requested.

With respect to Claim 8, the Examiner states the claim is unclear. Applicants respectfully traverse the rejection. In any event, Claim 8 has been amended for further clarification, and not for any reason related to patentability. Accordingly, withdrawal of the rejection is respectfully requested.

With respect to Claim 13, the Examiner states that it is not clear whether the phrase "hydrophobic fibers" is referring to the fibers of the first stratum or the second stratum. Applicants traverse the rejection of Claim 13. Claim 13 has been amended to replace canceled Claim 68, and not for any reason related to patentability.

With respect to Claim 15, the Examiner states that there is no antecedent basis for the natural fibers. Applicants respectfully traverse the rejection of Claim 15. Claim 15 has been amended to correct an obvious typographical error and for clarification, and not for any reason related to patentability. Accordingly, withdrawal of the rejection is respectfully requested.

With respect to Claims 16, 66, 69, 74, and 77, the Examiner states that it is not clear to which binder the claims are referring. Claims 66, 69, and 74 have been canceled. Applicants respectfully traverse the rejection of Claims 16 and 77. Claims 16 and 77 have been amended for clarification, and not for any reason related to patentability. Accordingly, withdrawal of the rejection is respectfully requested.

With respect to Claims 17 and 18, the Examiner states there is no antecedent basis for the phrase "the fibrous binding material." Applicants respectfully traverse the rejection of Claims 17 and 18. Claim 17 has been amended to correct a clearly obvious typographical error, and not for

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any reason related to patentability. Applicants believe the rejection of Claim 18 is in error as it does not recite "the fibrous binding material." Nevertheless, Claim 18 is amended for further clarification, and not for any reason related to patentability.

With respect to Claims 24 and 25, the Examiner states that the claims are unclear. Claims 24 and 25 have been canceled without prejudice. Accordingly, withdrawal of the rejection is respectfully requested.

The Rejection of Claims 1, 6-9, 11, 13-15, 20, 33,
63, 70, 71, and 74, Under 35 U.S.C. § 102(b)

Claims 1, 6-9, 11, 13-15, 20, 33, 63, 70, 71, and 74 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Pieniak (U.S. Patent No. 4,723,954). Claims 33, 63, 70, 71, and 74 have been canceled. Claim 1 has been amended. Claims 6-9, 11, 13-15, and 20 depend from Claim 1 or from a claim that depends from Claim 1. Applicants respectfully request withdrawal of the rejection of Claims 1, 6-9, 11, 13-15, and 20 for the following reasons.

Regarding Claims 1, 6-9, 13-15, and 20, Claim 1, as now amended, recites a "first stratum comprising synthetic fibers and a binder" and a "second stratum comprising crosslinked cellulosic fibers and a binder."

The Pieniak reference describes an absorbent structure consisting of a non-woven facing sheet and an absorbent batt. Applicants submit that Pieniak does not describe Claim 1 as now amended. The Examiner states that the binder of the second stratum is being interpreted as defined by the specification. Under the Examiner's definition, performing process steps (i.e., air laying, compression, and vacuum) that bind without a material or agent is considered to be a binder. See the Office Action at page 6. Applicants respectfully disagree with this reading of the specification. The specification describes a *material* or *agent* binder; processes, such as

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hydroentanglement, embossing, and tenderizing refer to the commingling and contact between strata. See p. 13, lines 3-6 of the instant specification.

For a reference to be anticipatory, the reference must exactly describe the claimed invention. Because Pieniak does not describe a first stratum comprising synthetic fibers and a binder and a second stratum comprising crosslinked cellulosic fibers and a binder, the reference is not anticipatory. Accordingly, withdrawal of the rejection is respectfully requested.

Furthermore, applicants submit that the invention as now claimed is nonobvious and patentable over the cited reference.

The Rejection of Claims 1, 6-16, 19, 20, 33,
63, 70, 71, 73-75, and 77 Under 35 U.S.C. § 102(b)

Claims 1, 6-16, 19, 20, 33, 63, 70, 71, 73-75, and 77 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Butterworth et al. (U.S. Patent No. 4,129,132). Claims 33, 63, 70, 71, 73, and 74 have been canceled. Claims 1 and 75 have been amended. Claims 6-16, 19, and 20 depend on Claim 1 or a claim that depends from Claim 1. Claim 77 depends from Claim 75. Applicants respectfully request withdrawal of the rejection of Claims 1, 6-16, 19, 20, 75, and 77, for the following reasons.

Regarding Claims 1, 6-16, 19, and 20, as now amended, Claim 1 recites a "first stratum comprising synthetic fibers and a binder" and a "second stratum comprising crosslinked cellulosic fibers and a binder." For a reference to be anticipatory, the reference must exactly describe the claimed invention. Because Butterworth et al. does not describe a first stratum comprising synthetic fibers and a binder and a second stratum comprising crosslinked cellulosic fibers and a binder, the reference is not anticipatory.

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Regarding Claims 75 and 77, independent Claim 75, like Claim 1, recites a "first stratum comprising synthetic fibers and a binder" and a "second stratum comprising crosslinked cellulosic fibers and a binder."

Accordingly, withdrawal of the rejection is respectfully requested.

Furthermore, applicants submit that the invention as now claimed is nonobvious and patentable over the cited reference.

The Rejection of Claims 10 and 12 Under 35 U.S.C. § 103(a)

Claims 10 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pieniak. Claims 10 and 12 depend from Claim 1. Applicants respectfully request withdrawal of the rejection of Claims 10 and 12 for the following reasons.

The Examiner states that Pieniak does not disclose the density of the second stratum, and further, concludes the limitation of the density to be a matter of design choice because the instant specification does not disclose that the claimed density solves any stated problem or produce any unexpected result.

To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. The initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has done. If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness. The Examiner is requiring the applicants to show a stated problem or an unexpected result before the Examiner has presented a convincing line of reasoning as to why the claims are obvious. This is not in accordance with Patent Office procedure. Pieniak fails to teach, suggest, provide motivation to make, or otherwise render

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obvious Claims 10 and 12. Accordingly, applicants respectfully request withdrawal of the rejection.

The Rejection of Claims 32 and 62-77 Under 35 U.S.C. § 103(a)

Claims 32 and 62-77 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wanek et al. (U.S. Patent No. 5,294,478) in view of Pieniak. Claims 62-74 have been canceled. Claims 32 and 75 have been amended. Claims 76 and 77 depend from Claim 75. Applicants respectfully request withdrawal of the rejection of Claims 32 and 75-77.

As now amended, Claim 32 recites a "first stratum comprising polyethylene terephthalate fibers and bicomponent binding fibers" and a "second stratum comprising crosslinked cellulosic fibers and a wet strength agent." Claim 75 recites a "first stratum comprising synthetic fibers and a binder" and a "second stratum comprising crosslinked cellulosic fibers and a binder."

Wanek et al. discloses a first and second surge layer with an absorbent layer interposed between the first and second surge layer. Applicants understand the Examiner considers the fibers of the second stratum to be the high absorbency material found in the absorbent layer of Wanek. The Examiner states that the second stratum binder is disclosed in column 3, line 61 to column 4, line 5 of Wanek. This passage, when taken in its proper context, does not teach or suggest a binder for the second stratum. The preceding and succeeding paragraphs of this passage refer to the synthetic fibers of the surge layers not the absorbent layer. Accordingly, the Wanek reference fails to teach or suggest at least a second stratum comprising crosslinked cellulosic fibers and a binder.

The Pieniak reference describes an absorbent structure consisting of a facing sheet and an absorbent batt. The Pieniak reference fails to teach or suggest at least a second stratum comprising crosslinked cellulosic fibers and a binder. The Examiner states that the binder of the second stratum is being interpreted according to the definition of binder on page 13 of the instant

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specification. Under the Examiner's definition of binder, process steps alone that bind, can be considered a binder. See Examiner's Action at page 6, ¶ 10. Applicants disagree with this characterization of binder. Binders are described in the specification as being materials or agents. The Wanek reference fails to teach or suggest the claimed invention. The teachings of Pieniak fail to cure the deficiencies of Wanek. Accordingly, because the cited references, either alone or in combination, fail to teach, suggest, provide motivation to make, or otherwise render obvious Claims 32 and 75-77, withdrawal of the rejection is respectfully requested.

The Rejection of Claims 1, 6-20, 24-26, and 62-69 Under 35 U.S.C. § 101

Claims 1, 6-20, 24-26, and 62-69 stand provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of Claims 1-23 and 25-32 of copending Application No. 09/620,947. Claims 24, 25 and 62-69 have been canceled in the present application. Applicants respectfully traverse the rejection of Claims 1, 6-20, and 26. Claim 1 has been amended. Further, the claims of Application No. 09/620,947 are directed to a wet laid absorbent unitary composite. Accordingly, the scope of the claims is not the same.

The Rejection of Claims 33, 70, 71, 73-75, and 77 Under 35 U.S.C. § 101

Claims 33, 70, 71, 73-75, and 77 stand provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of Claims 1, 26-29, 51, and 52 of copending Application No. 09/620,950. Claims 33, 70, 71, and 73-74 have been canceled in the present application. Applicants respectfully traverse the rejection of Claims 75 and 77. Claims 1, 26-29, 51, and 52 of Application No. 09/620,950, directed to an absorbent article, have been canceled by the amendment of June 26, 2002. Accordingly, withdrawal of the rejection is requested.

The Rejection of Claims 1, 13, 25, 62, 63, 65-67, and 69 Under 35 U.S.C. § 101

Claims 1, 13, 25, 62, 63, 65-67, and 69 stand provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of Claims 1-3, 26-29, 51, and 52 of copending

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Application No. 09/620,953. Claims 25, 62, 63, 65-67, and 69 have been canceled in the present application. Applicants respectfully traverse the rejection of Claims 1 and 13. Claims 1-3, 26-29, 51, and 52 of Application No. 09/620,953, directed to an absorbent article, have been canceled by the amendment of June 26, 2002. Accordingly, withdrawal of rejection is requested.

The Rejection of Claims 1, 62, 63, 65-67, and 69 Under 35 U.S.C. § 101

Claims 1, 62, 63, 65-67, and 69 stand provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of Claims 1, 26-29, 51, and 52, of copending Application No. 09/621,167. Claims 62, 63, 65-67, and 69 have been canceled in the present application. Applicants respectfully traverse the rejection of Claim 1. Claims 1, 26-29, 51, and 52 of Application No. 09/621,167, directed to an absorbent article, have been canceled by the amendment of June 26, 2002. Accordingly, withdrawal of the rejection is requested.

The Rejection of Claims 1, 6-20, 24, 25, 32, 33, and 62-77

Under Judicially Created Doctrine of Obviousness-Type Double Patenting

Claims 1, 6-20, 24, 25, 32, 33, and 62-77 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the pending claims of copending Application Nos. 09/620,953; 09/624,263; 09/621,167; 09/624,262; 09/326,213; 09/624,081; 09/620,947; and 09/620,950. Applicants take note of the double patenting rejection.

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CONCLUSION

In view of the above amendments and foregoing remarks, applicants believe that Claims 1, 6-20, 26, 32, and 75-77 are in condition for allowance. If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is requested to telephone applicant's attorney at 206.695.1755.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Commissioner for Patents, Washington, D.C. 20231, on the below date.

Date:

October 10, 2002

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VERSION WITH MARKINGS TO SHOW CHANGES MADE OCTOBER 10, 2002

In the Specification:

The paragraph beginning at page 10, line 34, has been amended to read as follows:

Although not to be construed as a limitation, other examples of pretreating fibers include the application of fire retardants to the fibers, or treatments with surfactants or other liquids, such as water or solvents, which modify the surface of the fibers. See, for example, U.S. patent application Serial No. 08/669,406, now U.S. Patent No. 5,837,627, filed July 3, 1996, and entitled "Fibrous Web Having Improved Strength and Method of Making the Same." Still other pretreatments include exposure to or incorporation of antimicrobials, pigments and densification or softening agents. Fibers pretreated with other chemicals, such as thermoplastic and thermosetting resins also may be used. Combinations of pretreatments also may be employed. Absorbent webs may also be similarly treated after web formation.

The paragraph beginning at page 11, line 9, has been amended to read as follows:

Any of the previously noted cellulosic fibers or pretreated cellulosic fibers treated with particle binders and/or densification/softness aids known in the art can also be employed in accordance with the present invention. The particle binders serve to attach other materials, such as superabsorbent polymers, to the cellulosic fibers. Cellulosic fibers treated with suitable particle binders and/or densification/softness aids and the process for combining them with cellulose fibers are disclosed in the following U.S. patents and patent applications: (1) Patent No. 5,543,215, entitled "Polymeric Binders for Binding Particles to Fibers"; (2) Patent No. 5,538,783, entitled "Non-Polymeric Organic Binders for Binding Particles to Fibers"; (3) Patent No. 5,300,192, entitled "Wet Laid Fiber Sheet Manufacturing With Reactivable Binders for Binding Particles to Binders;" (4) Patent No. 5,352,480, entitled "Method for

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Binding Particle to Fibers Using Reactivable Binders"; (5) Patent No. 5,308,896, entitled "Particle Binders for High-Bulk Fibers"; (6) Serial No. 07/931,279, now U.S. Patent No. 5,589,256, filed August 17, 1992, entitled "Particle Binders that Enhance Fiber Densification"; (7) Serial No. 08/107,469, now U.S. Patent No. 5,672,418, filed August 17, 1993, entitled "Particle Binders"; (8) Serial No. 08/108,219, now U.S. Patent No. 5,607,759, filed August 17, 1993, entitled "Particle Binding to Fibers"; (9) Serial No. 08/107,467, now U.S. Patent No. 5,693,411, filed August 17, 1993, entitled "Binders for Binding Water Soluble Particles to Fibers"; (10) Patent No. 5,547,745, entitled "Particle Binders"; (11) Serial No. 08/108,218, now U.S. Patent No. 5,641,561, filed August 17, 1993, entitled "Particle Binding to Fibers"; and (12) Patent No. 5,308,896, entitled "Particle Binders for High-Bulk Fibers," all expressly incorporated herein by reference. One example of a suitable densification/softness aid is a mixture of 70% sorbitol and 30% glycerin. The absorbent is treated with sorbitol and glycerin by spraying the absorbent with the mixture or passing the absorbent through a curtain coater, or other means of adding a liquid to a absorbent sheet familiar to those skilled in the art.

The paragraph beginning at page 14, line 31, has been amended to read as follows:

As noted above, the binder utilized in accordance with the present invention can also be a soluble bonding medium that can be incorporated with the pulped cellulosic fibers, either in fiber form, or as particles or granules. If desired, the bonding medium can also be coated onto solvent insoluble fibers, such as cellulosic fibers, which can then be distributed throughout the matrix of fibers making up each of the strata of the present invention. It is presently preferred that the bonding medium comprise a fiber and be mixed with the components of each stratum prior to the formation of the absorbent. The use of soluble bonding mediums with cellulose fiber webs is

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disclosed in U. S. patent application Serial No. 08/669,406, now U.S. Patent No. 5,837,627, filed July 3, 1996, entitled "Fibrous Web Having Improved Strength and Method of Making the Same," expressly incorporated herein by reference.

In the Claims:

Claims 1, 8, 13-18, 32, 75, and 77 have been amended as follows:

1. (Amended) An absorbent composite comprising a first stratum, a second stratum, and a transition zone intermediate and coextensive with the first stratum and the second [strata] stratum;

the first stratum comprising [hydrophobic] synthetic fibers and a binder;

the second stratum comprising crosslinked cellulosic fibers and a binder [and fibers selected from the group consisting of hydrophilic fibers, hydrophobic fibers, and mixtures thereof]; and

the transition zone comprising fibers from the first stratum and the second [strata] stratum commingled substantially uniformly across the composite's width and along the composite's length.

8. (Amended) The composite of Claim 1 wherein the first stratum has a pore size greater than the pore size of the second stratum.

13. (Amended) The composite of Claim 1 wherein the [hydrophobic] synthetic fibers comprise [are selected from the group consisting of natural fibers, synthetic fibers, and mixtures thereof] polyethylene terephthalate fibers.

14. (Amended) The composite of Claim [13] 1 wherein the synthetic fibers are selected from the group consisting of [polyethylene terephthalate,] polyethylene, polypropylene, nylon, latex, and rayon fibers.

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15. (Amended) The composite of Claim [7] 1, wherein the first stratum further comprises natural fibers, wherein the natural fibers are cellulosic fibers selected from the group consisting of cotton, wool, wood pulp, straw, and kenaf fibers.

16. (Amended) The composite of Claim 1 wherein [the] at least one binder comprises a fibrous binding material.

17. (Amended) The composite of Claim [10] 16 wherein the fibrous binding material comprises bicomponent binding fibers.

18. (Amended) The composite of Claim 1 wherein [the] at least one binder comprises a wet strength agent.

32. (Amended) An absorbent composite comprising a first stratum, a second stratum, and a transition zone intermediate and coextensive with the first stratum and the second [strata] stratum;

the first stratum comprising polyethylene terephthalate fibers and bicomponent binding fibers;

the second stratum comprising crosslinked cellulosic fibers and a wet strength agent; and

the transition zone comprising fibers from the first stratum and the second [strata] stratum commingled substantially uniformly across the composite's width and along the composite's length.

75. (Amended) A foam-formed absorbent composite comprising a first stratum, a second stratum, and a transition zone intermediate and coextensive with the first stratum and the second [strata] stratum;

the first stratum comprising synthetic fibers and a binder;

the second stratum comprising crosslinked cellulosic fibers and a binder; and

the transition zone comprising fibers from the first stratum and the second [strata] stratum

commingled substantially uniformly across the composite's width and along the composite's length.

77. (Amended) The composite of Claim 75 wherein [the] at least one binder is [at least] one of bicomponent binder fibers and a wet strength agent.

Claims 24, 25, 33, and 62-74 have been canceled.

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